KEY TO BRIEFS

1. JURISDICTIONAL STATEMENT

2. BRIEF IN OPPOSITION TO MOTION TO AFFIRM

3. APPELLANTS' MOTION AND BRIEF TO RECALL AND CLARIFY THE JUDGMENT

4. BRIEF OF MARYLAND PORT AUTHORITY, BALTIMORE ASSOCIATION OF COMMERCE AND THE MAYOR AND CITY COUNCIL OF BALTIMORE, APPELLEES, IN OPOSITION TO APPELLANTS' MOTION TO RECALL AND CLARIFY THE JUDGMENT

5. ANSWER OF THE BALTIMORE AND OHIO RAILROAD COMPANY, WESTERN MARYLAND RAILWAY COMPANY AND CANTON RAILROAD COMPANY, APPELLEES, TO APPELLANTS' MOTION TO RECALL AND CLARIFY JUDGMENT

I

Nos.

465

- 466

FILED
SEP 13 1957
JOHN T. PEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 465

ERIE RAILROAD COMPANY AND THE PORT OF NEW YORK AUTHORITY, *Appellants*

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., *Appellees*

No. 466

THE NEW YORK CENTRAL RAILROAD COMPANY, *Appellant*

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., *Appellees*

On Appeal From the United States District Court for the District of Maryland—Civil Action No. 9237

JURISDICTIONAL STATEMENT

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Interstate Commerce Act, 24 Stat. 379, as amended, 49 U.S.C.:
National Transportation Policy (Preamble to Section 1) 3, 4, 10, 11, 12, 13, 14
Section 1(5) 3, 4
Section 3(1) 3, 4
Section 15(1) 3, 4
Section 15(7) 3, 4, 10
Section 15a(2) 3, 4

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On Appeal From the United States District Court for the District of Maryland—Civil Action No. 9237

JURISDICTIONAL STATEMENT

The Erie Railroad Company, The New York Central Railroad Company, and The Port of New York

Authority, appellants, submit this statement in compliance with Rules 13 and 15 of the Supreme Court of the United States to show that the Supreme Court has jurisdiction of this appeal and that substantial questions are presented.

OPINION BELOW

The opinion of the United States District Court for the District of Maryland, decided April 26, 1957, is reported below at 151 F. Supp. 258, and is appended hereto as Appendix A. The court entered no findings of fact or conclusions of law apart from its opinion. The decree of the district court, entered May 22, 1957, is appended hereto as Appendix B.

The reports of the Interstate Commerce Commission are reported at 291 I.C.C. 527, 299 I.C.C. 195 and 300 I.C.C. 102.

JURISDICTION

This action was brought under 28 U.S.C. Sections 1336, 1398, 2284, and 2321-2325, and 5 U.S.C. Section 1009, and 49 U.S.C. Section 17(9) to enjoin and set aside an order of the Interstate Commerce Commission entered on October 1, 1956. The decree of the district court which is appealed from was entered on May 22, 1957. Notices of appeal were filed in that court on July 19, 1957, by these appellants and separate notices of appeal were filed also by the Interstate Commerce Commission, United States of America, The Pennsylvania Railroad Company, City of Philadelphia, Chamber of Commerce of Greater Philadelphia, Delaware Port Authority, and by Armco Steel Corporation, M. A. Hanna Company, Iron Ore Company of Canada, National Steel Corporation, Republic

Steel Corporation, Wheeling Steel Corporation, and The Youngstown Sheet and Tube Company.

Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. Sections 1253 and 2101(b) and is sustained by a large number of cases, including the following: *New York* v. *United States*, 331 U.S. 284 (1947); *Ayrshire Collieries Corp.* v. *United States*, 335 U.S. 573 (1949); *King* v. *United States*, 344 U.S. 254 (1952).

STATUTES INVOLVED

The National Transportation Policy [Preamble to 49 U.S.C., sec. 1] and Sections 1(5), 3(1), 15(1), 15(7), 15a(2) of the Interstate Commerce Act, as amended [49 U.S.C. Sections 1(5), 3(1), 15(1), 15(7), 15a(2)] are set forth in full in Appendix C hereto.

QUESTIONS PRESENTED

The decree of the court below enjoins an order of the Interstate Commerce Commission entered in a proceeding instituted under Section 15(7) of the Interstate Commerce Act.

Acting under Section 15(7) of the Interstate Commerce Act, the Commission ordered the suspension of certain proposed rail rate schedules pending a hearing and determination on the lawfulness of such schedules. At the conclusion of its investigation, the Commission vacated certain portions of its suspension orders.

The district court enjoined the order of the Commission entered at the conclusion of its investigation insofar as the Commission order vacated the suspen-

sion of rates from New York, N. Y., to Youngstown, Ohio.

The following questions are presented by this appeal:

1. Whether the district court erred in setting aside an order of the Interstate Commerce Commission which found just and reasonable reductions in rates initiated by the rail carriers for application on imported iron ore from the Port of New York to the Youngstown, Ohio, area, equalizing their rates from the Port of New York with the rates of the rail carriers serving the Port of Baltimore to the same destination area, after the Commission had found, upon substantial evidence, that the proposed reduced rates (1) are compensatory, (2) are necessary to enable the carriers serving the Port of New York to compete with carriers serving the Port of Baltimore for the increasing volume of imported iron ore traffic, (3) are in accord with the National Transportation Policy, and (4) are not otherwise unlawful.

2. Whether the district court erred in its interpretation and application to this action of the provisions of the National Transportation Policy (Preamble to 49 U.S.C., sec. 1) and Sections 1(5), 15(1), 15(7) and 15a(2) of the Interstate Commerce Act (49 U.S.C., secs. 1(5), 15(1), 15(7) and 15a(2)).

3. Whether the district court erred in setting aside an order of the Commission finding just and reasonable certain carrier-initiated rates, on the theory that distance alone is the controlling factor in determining the lawfulness of rates on import traffic from the several North Atlantic ports to interior destinations.

4. Whether the district court erred in setting aside an order of the Commission finding just and reasonable a schedule of reduced rates, on the theory that the freedom of rail carriers to initiate competitive rates must yield to a long-established differential rate relationship which the court found had been voluntarily maintained by the same carriers.

5. Whether the district court, by failing to distinguish between voluntary rate action by carriers and prescription of rates by the Commission over carrier objections, erred in not recognizing that, within reasonable limits, carriers may for competitive reasons initiate, and the Commission may find just and reasonable, equalized rates on imported iron ore, in spite of differences in distance.

6. Whether the district court erred in remanding the case to the Commission to make explicit findings as to the relative costs of operation of ocean-going vessels used in transporting iron ore from various origins throughout the world to North Atlantic ports and to make explicit findings as to the volume of imported iron ore traffic to be reasonably expected in the future to move through the individual North Atlantic ports to the interior destinations (1) under a parity of railroad rates and (2) under a differential basis of rates.

STATEMENT

Prior to World War II, very little iron ore was imported into this country. Virtually all of that which was imported through the North Atlantic ports was consumed in furnaces at or near the eastern seaboard and none moved to any destinations west of Pittsburgh. The steel mills in the Wheeling, W. Va., and Steubenville and Youngstown, Ohio, areas received